
United States
Circuit Court of Appeals

For the Ninth Circuit.

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

ELLIOTT PETROLEUM CORPORATION,
Respondent.

Transcript of Record

Upon Petition to Review an Order of the United States
Board of Tax Appeals.

United States Circuit Court of Appeals

FILED

AUG 16 1935

PAUL P. O'BRIEN,

109.6.35

No. 7892

United States
Circuit Court of Appeals

For the Ninth Circuit.

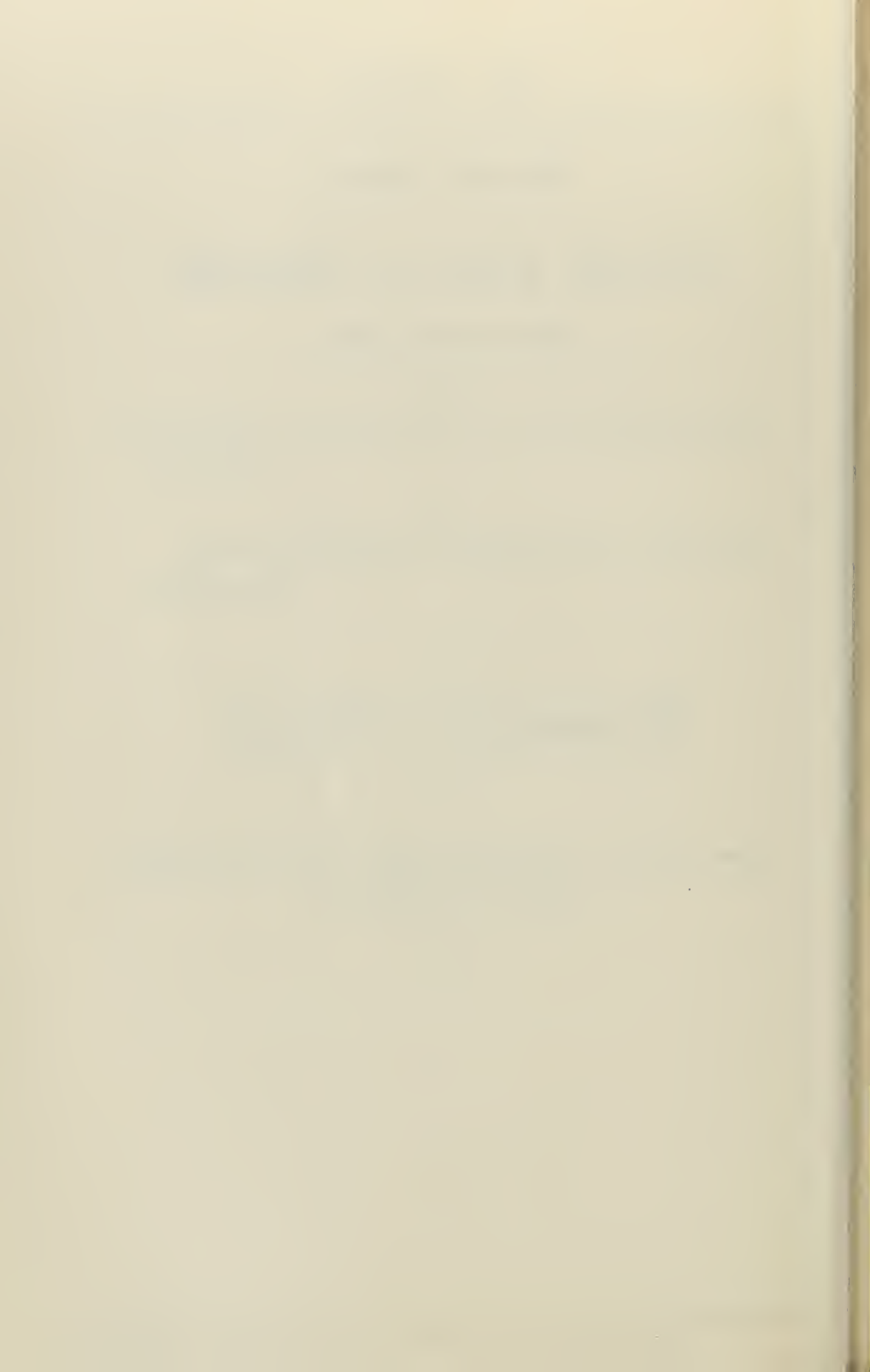
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES:

For Petitioner:

ROBERT N. MILLER, Esq.,
MELVIN D. WILSON, Esq.,

For Commissioner:

I. GRAFF, Esq.,
E. G. SIEVERS, Esq.,

Docket No. 71769

ELLIOTT PETROLEUM CORPORATION,
Petitioner.

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES.

1933

- May 1—Petition received and filed. Taxpayer notified. (Fee paid).
May 2—Copy of petition served on General Counsel.
June 1—Answer filed by General Counsel.
June 7—Copy of answer served on taxpayer, General Calendar.

1934

- Mar. 19—Motion for Circuit hearing in Los Angeles, Calif., filed by taxpayer, Mar. 20, 1934
Granted.
Mar. 30—Hearing set beginning June 4, 1934 in Beverly Hills, Calif.

1934

- June 11—Hearing had before Mr. Adams on merits, submitted. Stipulation of facts filed. Petitioner's brief due July 12, 1934. Respondent's brief due August 12, 1934.
- July 9—Brief filed by taxpayer. July 9, 1934 Copy served on General Counsel.
- Aug. 11—Motion for extension to Sept. 12, 1934 to file brief, filed by General Counsel. Aug. 13, 1934 Granted.
- Sept. 19—Motion for extension to Oct. 12, 1934 to file brief, filed by General Counsel. Sept. 12, 1934.—Granted to Oct. 12, 1934.
- Oct. 12—Brief filed by General Counsel.
- Oct. 20—Reply brief filed by taxpayer. Oct. 22, 1934 Copy served on General Counsel.

1935

- Jan. 2—Memorandum Opinion rendered, Jed C. Adams, Division 12. Decision will be entered for the petitioner.
- Jan. 3—Decision entered, Annabel Matthews, Division 13.
- Mar. 19—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by General Counsel.
- Mar. 30—Proof of Service filed by General Counsel.
- Apr. 11—Praecipe filed by General Counsel.
- May 13—Proof of service filed.
- May 17—Order enlarging time to June 30, 1935 for transmission and delivery of record, entered. [1]*

*Page numbering appearing at the foot of page of original certified Transcript of Record.

United States Board of Tax Appeals

Docket No. 71769

ELLIOTT PETROLEUM CORPORATION,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION.

The above-named Petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, IT:AR:E-4 AMcM-60D, dated March 8, 1933, and as a basis of its proceeding alleges as follows:

1. The Petitioner is a corporation with principal office at 417 South Hill Street, Los Angeles, California.

2. The notice of deficiency, a copy of which is attached and marked "Exhibit A", was mailed to the Petitioner on March 8, 1933.

3. The taxes in controversy are corporation income taxes for the calendar year 1930, and for \$1,045.29.

4. The determination of tax set forth in the said notice of deficiency is based upon the following error:

(a) Respondent erred in disallowing depletion of \$19,167.44. [2]

5. The facts upon which the Petitioner relies as the basis of this proceeding are as follows:

(a) In 1930, Petitioner received \$69,699.81 as gross and net income from certain oil and gas producing property in which Petitioner had a depletable interest.

(b) Petitioner is entitled to a depletion deduction of 27½ per cent of the gross income, or \$19,167.44.

WHEREFORE, the Petitioner prays that this Board may hear the proceeding and find that Petitioner is entitled to depletion in the sum of \$19,167.44.

ROBERT N. MILLER
c/o Miller & Chevalier,
922 Southern Building,
Washington, D. C.

MELVIN D. WILSON
c/o Miller, Chevalier,
Peeler & Wilson,
819 Title Insurance Bldg.,
Los Angeles, California.
Counsel for Petitioner. [3]

State of California,
County of Los Angeles—ss.

F. C. MERRITT, being duly sworn, says:

That he is the Vice President of ELLIOTT PETROLEUM CORPORATION, the Petitioner

above-named, and as such officer is duly authorized to verify the foregoing Petition; that he has read the foregoing Petition and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be upon information and belief, and those facts he believes to be true.

[Seal]

F. C. MERRITT

Subscribed and sworn to before me this 28th day of April, 1933.

[Seal]

CHARLES E. KERN

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Sept. 3, 1935.

[Endorsed]: Filed May 1, 1933. [4]

EXHIBIT A.

TREASURY DEPARTMENT
WASHINGTON

Office of
Commissioner of Internal Revenue

March 8, 1933.

Address Reply to
Commissioner of Internal Revenue
and Refer to

Elliott Petroleum Corporation,
417 South Hill Street,
Los Angeles, California.

Sirs:

You are advised that the determination of your tax liability for the year(s) 1930 discloses a defi-

ciency of \$1,045.29, as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the inclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT-C:P-7. The signing of this form will expedite the closing of your return(s) by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the inclosed form, or on the date assessment is made, whichever is earlier; WHEREAS IF THIS FORM IS NOT FILED, interest will accumulate to the date of assessment of the deficiency.

Respectfully,

DAVID BURNET,

Commissioner.

By W. T. SHERWOOD

Acting Deputy Commissioner.

Inclosures:

Statement

Form 870. [5]

STATEMENT

IT:AR:E-4

AMcM-60D

In re: Elliott Petroleum Corporation,
417 South Hill Street,
Los Angeles, California.

INCOME TAX LIABILITY

Year—1930

Income Tax Liability—\$1,045.29

Income Tax Assessed—None

Deficiency—\$1,045.29

Net loss shown on the return (\$40,564.11)

Addition to income:

Depletion disallowed 52,274.86

Adjusted net income \$11,710.75

EXPLANATION OF ADJUSTMENT

In the adjustment of profit on the sale of Clark Lease during the taxable year 1928, the contract to receive \$137,500.00 out of subsequent production of oil was included in the sale price at its fair market value which was considered to be 75%.

In consideration of a claim for refund for the year 1928, the discounted value for subsequent payments was eliminated in accordance with the decision of the United States Supreme Court in the case of *Burnet v. Logan*. The subsequent payments out of oil produced are, therefore, taxable in full in the year received.

It is held that depletion on the payments out of oil produced is not allowable since the corporation retained no depletable interest after assignment.

COMPUTATION OF TAX

Net income	\$11,710.75
Less:	
Credit	3,000.00
	<hr/>
Balance taxable at 12%	\$ 8,710.75
Income tax at 12%	\$ 1,045.29
Income tax previously assessed	None
	<hr/>
Deficiency	\$ 1,045.29
	[6]

[Title of Court and Cause.]

ANSWER.

The Commissioner of Internal Revenue by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition filed in the above-entitled appeal, admits and denies as follows:

1, 2, and 3. Admits the allegations of fact contained in paragraphs (1), (2), and (3), of the petition.

4. Denies that the respondent erred in the determination of the said deficiency as alleged in paragraph 4 (a), of the petition.

5. Denies all the material allegations of fact contained in sub-paragraphs (a) and (b), of paragraph (5), of the petition.

6. Denies generally and specifically each and every allegation of the petition not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the appeal be denied.

(Signed) C. M. CHAREST.

General Counsel,
Bureau of Internal Revenue.

Of Counsel:

FRANK B. SCHLOSSER,
Special Attorney,
Bureau of Internal Revenue.

[Endorsed]: Filed Jan. 1, 1933. [7]

[Title of Court and Cause.]

STIPULATION.

The parties hereto, through their respective counsel, Messrs. Miller, Chevalier, Peeler & Wilson, by Melvin D. Wilson, Esq., for the Petitioner, and Robert H. Jackson, Esq., General Counsel, Bureau of Internal Revenue, for the Respondent, hereby stipulate and agree that the following may be considered as facts in this cause:

1. The Petitioner is a corporation having its principal office and place of business in Los Angeles,

California. It filed a corporation income tax return for the calendar year 1930 with the Collector of Internal Revenue for the Sixth Collection District in Los Angeles, California.

2. On or about June 13, 1922, J. E. Elliott leased certain oil bearing land in the County of Los Angeles from Chauncey Dwight Clarke and Marie Rankin Clarke. A copy of said Lease is attached hereto and marked Exhibit "A". [8]

3. On the 27th day of June, 1922, J. E. Elliott and Lillian F. Elliott, his wife, assigned all of their right, title and interest in and to the said Clarke Lease to the Petitioner. A copy of said Assignment is attached hereto and marked Exhibit "B".

4. On August 17, 1928, the Petitioner entered into an Agreement with the Richfield Oil Company of California. This Agreement was called "Assignment of Oil and Gas Lease", a copy of which is attached hereto and marked Exhibit "C".

5. On August 17, 1928, the Petitioner entered into an Agreement with the Richfield Oil Company of California designated "Bill of Sale", a copy of which is attached hereto and marked Exhibit "D".

6. On August 17, 1928, the Petitioner entered into an Agreement with the Richfield Oil Company of California, designated "Collateral Agreement", a

copy of which Agreement is attached hereto and marked Exhibit "E".

7. The Agreement between the Petitioner and the Richfield Oil Company of California, was carried out in all respects from the date of its agreement through December 31, 1930. Petitioner received from the Richfield Oil Company of California, on account of said Agreement, in 1930, the sum of \$69,699.81.

8. If Petitioner is entitled to a deduction from said gross income of \$69,699.81 for depletion, the amount of such deduction shall be \$19,167.44, which is 27½ per cent of the said \$69,699.81. [9]

Petitioner received in 1928 from The Richfield Oil Company of California on account of said agreements the cash consideration of \$137,500.00 mentioned in said agreement plus \$19,494.58 on account of the balance of the consideration mentioned in said agreement, or an aggregate amount of \$156,994.58. In 1929 petitioner received \$35,797.68 on account of the balance of the consideration mentioned in said agreement. At the time of petitioner's said agreements with Richfield Oil Company of California, petitioner's unrecovered capital cost of the said Clarke Lease was \$38,272.53. In the final determination of petitioner's tax liability for 1928 the Commissioner of Internal Revenue deducted said unrecovered capital cost from the said amount of

\$156,994.58 in arriving at the taxable net profit from the transaction.

Dated: June 7, 1934.

MELVIN D. WILSON,
Miller, Chevalier, Peeler &
Wilson
819 Title Insurance Bldg.,
Los Angeles, California.
Counsel for Petitioner.

ROBERT H. JACKSON,
General Counsel,
Bureau of Internal Revenue.
Counsel for Respondent. [10]

EXHIBIT "A"

LEASE

Between

CHAUNCEY DWIGHT CLARKE
MARIE RANKIN CLARKE

and

J. E. ELLIOTT

DATED JUNE 13, 1922.

(Assignment to Elliott Petroleum Corporation—
6/27/22)

[11]

THIS INDENTURE OF LEASE, made and entered into at Los Angeles, California, this 13th

day of June, 1922, by and between CHAUNCEY DWIGHT CLARKE and MARIE RANKIN CLARKE, hereinafter referred to as "Lessors" and J. E. ELLIOTT, hereinafter referred to as "Lessee";

WITNESSETH:

That for and in consideration of the making of this lease and of the royalties, rents and royalties to be paid by the Lessee to Lessors, as hereinafter specified, and in further consideration of the covenants, agreements and stipulations by Lessee hereinafter set forth, Lessors do hereby lease, demise and let unto the Lessee, and the Lessee does hire and accept from the Lessors, for the term and time, and for the purposes herein specified, and in accordance with the covenants, agreements and conditions hereinafter set forth, all that real property situate in the County of Los Angeles, and State of California, and more particularly described as follows: to-wit:

A portion of the fractional northeast quarter ($NE\frac{1}{4}$ of the Northeast quarter ($NE\frac{1}{4}$) of Section One (1), Township Three (3) South, Ranch Twelve (12) West, of the Rancho Santa Gertrudes subdivided for the Santa Gertrudes Land Association, as per map recorded in Book 1, page 502 of Miscellaneous Records, in the Office of the Recorder of said County, described as beginning at the intersection of the southerly line of the Anaheim Telegraph Road with the east line of said Section One (1), thence South $0^{\circ} 10' 15''$ East along said East

line of Section One (1) 544.15 feet; [12] thence North 63 38' 35" west 491.39 feet, thence north 8 42' 25" East 510.91 feet to the southerly line of the said Anaheim Telegraph Road; thence south 63 38' 35" East along the said southerly line of the said Anaheim Telegraph Road 403.32 feet to the point of beginning, containing five (5) acres, situated in the County of Los Angeles, State of California: excepting that part of the surface of said premises included in the orange grove of Lessors and being that part of said premises lying and being westerly of the cement wall running northerly and southerly thereon;

together with the right and privilege to mine, excavate, bore, drill, sink for and otherwise collect, take and remove, and develop asphaltum, petroleum, natural gas, tar, and any and all other hydrocarbon substances and products from, upon and under the said premises, and also the right to construct, maintain and use on so much of the surface of said premises, except said surface of said part of said premises westerly of said wall, for such buildings, fixtures and machinery as may be needed or convenient in carrying on said business and mining operations, and to construct and maintain upon, over and across and along said premises such telephone, electric, water and pipe lines, highways, reservoirs and tanks as may be needed or convenient, together with rights of way over and across and along said lands for the passage and conveyance of

said Lessee, his agents and employees for transporting supplies and machinery and products of said mining operations and for the purpose of carrying on said business generally.

1.

The term of this lease shall begin at the date hereof and extend for a period of twenty (20) years therefrom, subject to earlier termination, [13] or extension, of the rights of Lessee, as hereinafter provided.

2.

The Lessee, in consideration of the premises, hereby covenants and agrees with the Lessors as follows:

(a) That the Lessee will on or before August 15, 1922, begin with a full size modern rotary drilling rig and the necessary machinery and appliances, the actual drilling of a well at least twelve and one-half ($12\frac{1}{2}$) inches in diameter, at the top and continuing for said diameter for approximately twelve hundred (1200) feet, intended and designed to develop the deposits of said hydrocarbon substances supposed to exist in said premises, at a point thereon mutually agreed upon by Lessors and Lessee; that said drilling point shall not be changed for more than approximately fifty (50) feet therefrom or shall more than one (1) well be drilled on said premises without the written consent of Lessors; that Lessee will from and after said August 15,

1922, diligently and continuously in a skillful, efficient and workmanlike manner prosecute the work of drilling said well until a well has been drilled to a depth of five thousand (5,000) feet, unless oil is found in paying quantities at a lesser depth; provided, however, that if in the drilling of said well there should be encountered such formation as to justify experienced oil geologists in the belief that further oil drilling would be unproductive of oil or other hydrocarbon substances in paying quantities, or that further drilling would be unprofitable or impracticable, Lessee may at his option abandon such work and be relieved of further drilling obligations hereunder by surrendering possession of said premises unto Lessors and executing to Lessors a deed of conveyance sufficient in form and substance to clear Lessors title of the leasehold estate hereby created; it being the purpose and intention of the parties hereunto that a well shall be promptly drilled by the Lessee to test said land for the mineral deposits aforesaid and to develop such deposits if discovered; and because of similar activities upon adjacent lands expedience in the completion of such a well is necessary for the [14] protection of the parties hereto, and Lessee promises and undertakes to perform such work and complete such a well in the manner and for the purposes aforesaid, and if said well is destroyed or not completed as herein contemplated, Lessee will within sixty (60) days after the cessation of drilling said well, begin and prosecute the drilling and completion of another

well on said premises as provided herein for the drilling and completion of the well herein contemplated and at a point thereon mutually agreed upon designated by Lessors and Lessee.

(b) Lessee will pay in cash to Lessors on or before August 15, 1922, the sum of Eight thousand dollars (\$8,000.00) paying to each Lessor one-half thereof for the right to drill on said premises as herein specified; and Lessee further agrees to pay to Lessors out of oil or gas or other hydrocarbon substances or by-products thereof which may be produced from said premises by the Lessee hereunder, the sum of Sixteen thousand dollars (\$16,000.00) paying to each Lessor one-half thereof payable on or before eight (8) years after the discovery of oil or gas or other hydrocarbon substances in paying quantities by the Lessee on said premises and payable in installments of at least Two thousand dollars (\$2,000.00) per year commencing on or before ninety (90) days after discovery of said oil or gas or other hydrocarbon substances or by-products thereof which may be produced, saved and sold from said premises by the Lessee, and if oil or gas or such other substances or by-products thereof in paying quantities is not found on said premises, then any obligation to pay said sum of Sixteen thousand dollars (\$16,000.00) shall terminate and be discharged; and Lessee will, so long as this lease remains in force and effect, either in whole or in part, deliver and pay to said Lessors as royalty or

rental, in addition to the above specified sums, thirty per cent (30%) paying to each Lessor one-half thereof, of all the settled oil, gas and other hydrocarbon substances, and by-products thereof, produced and saved from said premises, after deducting from said total an amount of oil and gas necessary or essential and actually used by Lessee in the carrying on of the works of drilling and operating said well and [15] producing said products; and will furnish out of the gross oil and gas to Lessors at said well without charge or expense to them, except for connections and piping and at Lessors' risk, oil and gas for use on the adjoining premises of Lessors for domestic and pumping purposes for irrigation on said adjoining premises; Lessee agrees that at the option of Lessors, Lessee will deliver said thirty per cent (30%) royalty at the tanks or reservoirs upon said premises, or he will sell such royalty oil, gas or other hydrocarbon substances or by-products thereof for Lessors without expense or charge to Lessors at the prevailing market price of such as and when and for same prices and upon the same conditions he sells his portion thereof; unless Lessors make written demand upon the Lessee to deliver all such royalty in kind. From time to time Lessors shall have the right to elect either to take such royalty in kind or to require Lessee to sell same, as above specified, giving the Lessee at least thirty (30) days' notice in advance of the exercise of such right of election. If Lessors shall take such royalty in kind the Lessee shall provide storage

therefor upon said premises for a period of thirty (30) days after the 15th day of each month when said royalty is payable and shall allow Lessors the use of his pipe line and loading rack and facilities for loading and transporting such royalty, all without charge to Lessors; deliveries of said royalty if taken in kind shall be made unto the Lessors monthly on the 15th day of each calendar month for the royalty due the preceding month.

(c) If casinghead gasoline or any other product shall be made from gas produced or found or saved from or upon said premises, then and in such event Lessors shall receive and be entitled to thirty per cent (30%) each of Lessors receiving one-half of said thirty per cent (30%) of the prevailing market price therefor at the well upon said premises at the time of the manufacture thereof, less thirty per cent (30%) of the actual cost and expense of manufacture, provided, that no overhead expense shall be included in the said costs of manufacture. [16]

(d) That Lessee will not erect or construct any oil derrick on said premises within three hundred (300) feet of any dwelling house which at the time of the commencement of said well has been constructed on said premises.

(e) Lessee shall keep on said premises or at Los Angeles, California, accessible to Lessors, accurate books of account showing the production of said substances from said premises, and the by-products

thereof, the quality, gravities, value, prices and quantities thereof, the consignees and points of delivery, and Lessors shall have access thereto at all reasonable times, either personally or by their representatives. When Lessors shall take royalty in kind, Lessee shall furnish Lessors on or before the 15th day of each calendar month with a statement showing the quantities, qualities, and gravities of all oil and gas and other substances and by-products thereof produced on or from said premises during the preceding calendar month. While Lessors are not taking royalty in kind, Lessee shall render Lessors on the 15th day of each successive calendar month, an accurate account and statement showing the quantity of production of oil and gas and other substances and by-products thereof during the preceding calendar month and the quality, gravity and sale price if sold, thereof; at the same time Lessee shall account for and pay to Lessors any sum or sums which Lessee may have received or collected for Lessors, which Lessors shall be entitled to for royalty; such statements of production shall also include all of the information given the State Mining Bureau as to the production of said premises according to the monthly report furnished such Bureau; if no monthly report to said Bureau shall be required, such statement shall show the estimated production from said premises for the given period.

(f) That Lessee will upon the termination of this lease for any cause whatsoever remove from

said premises within a reasonable time after demand by Lessors, all machinery, appliances, buildings and structures and improvements placed by the Lessee thereon, subject, however, to the rights of Lessors thereto or any part thereof as specified in this lease. [17]

(g) That Lessee will in any action or proceeding wherein Lessors prevail to remove any cloud resting upon said premises or any part thereof by reason of the making of this lease or of any person or persons claiming by, through or under him any interest in said premises, upon demand pay to Lessors the court costs and expenses of such proceeding including a reasonable attorney's fee to be fixed by the court in such proceeding for the institution and prosecution of such action.

(h) That Lessee will give to Lessors at least thirty (30) days prior notice in writing before removing any derrick or machinery or appliances or buildings or structures or the casing of any well, from said premises, except that any contractor may remove any machinery, appliances, structures or supplies owned and placed by and for said contractor upon said premises for the purpose of drilling a well for said Lessee.

(i) That Lessee will well and truly pay before delinquency all taxes and assessments levied or assessed against any personal property upon said premises which may be owned or placed thereon by

Lessee, and said Lessee will pay before delinquency seventy per cent (70%) of all taxes or assessments that may be assessed or levied upon or against said premises during the term of this lease in excess of taxes levied or assessed thereon for the year 1922, in so far as such excess is caused by the production or the discovery of oil or gas or other hydrocarbon substances in or on said premises.

(j) That Lessee will conduct and carry on his operations hereunder with the least possible damage and inconvenience to the farming or other uses of said premises as is consistent with the reasonable conduct of carrying on his operations as herein contemplated, and will not do or suffer damage to adjacent property or any adjacent premises of Lessors or either of them. Lessee will hold Lessors and each of them and said premises harmless against all damages, or claims or costs or expense for damages, which may be asserted by owners of adjacent lands or other persons by reason of the operations of Lessee hereunder or because of fire or the overflow or escaping of oil or gas or water or other [18] substances from said premises. Lessee will not suffer or permit any mechanic's lien to be enforced against Lessors or either of them or said premises or any part thereof by reason of any acts of, or operations done or suffered by Lessee, but will hold Lessors and each of them and said premises safe and harmless therefrom and from any and all costs and expenses incurred or suffered by Lessors and

each of them because of the filing of any such lien. Lessee will within thirty (30) days after the destruction by reason of his operations hereunder of any growing trees on said premises or any premises of Lessors or either of them pay to Lessors for each tree so destroyed as follows:

Orange trees	\$100.00 each
Walnut trees	\$100.00 each
Pine trees	\$100.00 each
Gum trees	10.00 each;

and any gum shoot 20 feet high shall be deemed to be a tree for the purposes hereof.

Destruction in this paragraph shall be deemed to mean such injury by reason of operations of Lessee to such tree or trees as renders it unproductive or destroys its usefulness.

(k) That Lessee will continue and carry on such operations in every respect in accordance with all valid laws, rules and regulations adopted by the public authorities governing said operations.

(l) That Lessee will diligently operate and/or pump all producing wells on said premises and develop and handle said substances and products and the by-products thereof so as to secure the largest and best monthly returns in value therefrom, reasonably subject to market conditions and according to the customs and practices in that line of business.

(m) Lessee agrees to keep on said premises or at Los Angeles, California, accessible to Lessors, an

accurate log of the drilling of said well and any and every well drilled hereunder and a casing record thereof; and he will promptly upon demand allow Lessors or their representatives to inspect and make copies of such log and record at all reasonable times. [19]

(n) That Lessee will not release, sublet or assign this lease, or any part thereof or any rights or interest therein, nor shall the same in any manner pass or be transferred from Lessee by operation of law or by virtue of any legal proceedings, without the written consent of Lessors; and this provision shall also apply to each and every subsequent assignment or transfer hereunder and unless each and every subsequent transfer or assignment is consented to in writing by Lessors the same shall be void and without effect, and Lessee and each and every subsequent assignee and transferee of this lease or any rights or privileges hereunder, covenants and agrees to and with Lessors that such assignee or transferee or holder will not accept any interest or rights hereunder without the written consent of lessors first had and obtained therefor. Lessors hereby consent to Lessee assigning this lease to a corporation organized by him under the laws of the State of California, to be named "Elliott Petroleum Corporation" upon the condition however, that each and all of the terms and conditions of this lease, and all of the covenants and agreements on the part of the Lessee herein shall be binding upon and extend to

said assignee as well as said Lessee herein as fully as though said assignee were originally named as Lessee herein jointly with the original Lessee herein.

(o) Lessee covenants and agrees that if he should acquire any drilling rights or interest therein upon any contiguous or adjacent land he will not drill or operate any well thereon which shall be nearer than one hundred fifty (150) feet to any boundary line of the premises described in this lease.

3.

LESSORS HEREBY COVENANT AND AGREE
TO AND WITH LESSEE AS FOLLOWS:

(a) That said Lessor Chauncey Dwight Clarke is the owner of said described land in fee simple, and that said land is free and clear of all encumbrances, except current taxes and rights of way, [20] or easements of record, and that said described land is registered in the name of said Lessor under and in accordance with the provisions of that certain Act adopted in 1915 by the people of California known as the "Land Title Law" or "Torrens Land Act", and that the number of the certificate of the premises registered thereof is A B 11903; and that contemporaneously with the execution and delivery of this lease Lessors will procure and deliver to Lessee a certificate duly issued by the Registrar of Title under said Act showing that the title to said described land at the time of the execution of this lease is vested in fee simple in said Lessor and that

said premises and the rights and privileges and easements herein defined are free and clear of all encumbrances, except current taxes and rights-of-way or easements of record; that Lessors will warrant and defend the said Lessee in the free and unrestricted enjoyment of his demise hereunder to the Lessee from any act or acts of any person claiming by, through or under said Lessors.

(b) That Lessors will pay or cause to be paid promptly before delinquency all taxes levied or assessed upon said premises except the taxes and assessments agreed to be paid by said Lessee.

4.

IT IS EXPRESSLY STIPULATED AND AGREED that in consideration of the performance of the covenants herein contained by him to be performed said Lessee shall have and he is hereby granted the following rights and privileges, to-wit:

(a) To construct, lay and maintain any and all derricks, pipe, telephone, water and electric lines, roads and ways, and to use and enjoy all reasonable roads and ways under and across any part of said premises, except said surface of said part thereof westerly of said cement wall, for the purpose of continuing and carrying on any of the operations herein contemplated, and to erect and maintain thereon reservoirs, tanks, and other containers for the purpose of holding, storing, or otherwise preserving any of the products by this lease contem-

plated to be produced or found or saved from said premises. [21]

(b) To remove from said premises all machinery, pipe and other lines, derricks, casing, improvements of every description and nature which may have been placed thereon or therein by him, except so far as such removal may be inconsistent with any of the provisions of this lease or the rights of Lessors hereunder and only in the event that Lessee is not in default under any of the terms or conditions or provisions of this lease.

(c) To use so far as the same may be required in the drilling operations hereunder any water or water rights appurtenant to said premises, whenever same is not wanted by Lessors, for sale or for use or for any purpose whatsoever now existing or hereafter arising or created, upon paying to Lessors the operating costs therefor and for the wear and tear on and damage to the pumping plant and machinery while operating same for his use.

(d) To suspend operations under this lease without prejudice to the rights granted hereunder when and for so long as the market value of the total oil, gas, and substances produced and saved hereunder shall not be more than the value of the settled oil of the kind and quality produced from said premises computed at fifty (50) cents per barrel at said premises.

(e) To continue this lease from and after said twenty (20) year term for so long thereafter as oil

or gas, or either of them are produced in paying quantities therefrom, unless otherwise forfeited by Lessee.

5.

AND IT IS FURTHER COVENANTED AND AGREED:

(a) That Lessors shall have the use and enjoyment of all said premises not required by Lessee for the conducting and carrying on the works as herein contemplated, provided, however, that same shall not be used in any manner for any oil operations of any kind by any person other than Lessee.

(b) That all work and operations hereunder shall be done and performed at the sole cost and expense of Lessee. That Lessors may post and keep [22] posted on said premises such notices as they may desire in order to protect Lessors, and each of the, and/or said premises against liens and any and all claims or damages or liabilities because of any act or acts of Lessee or his operations hereunder.

(c) That Lessors or their representatives may inspect and copy all books, logs, papers, records, work done and being done, and operations of Lessee in so far as the same may assist in the determination of the quantity, quality and value of the products, and by-products saved or produced or to be saved or produced from said premises, or whether Lessee

has duly performed or is performing each and every covenant of this lease.

(d) That Lessors may terminate this lease for the violation or the failure of Lessee to perform any of the terms, covenants, conditions or provisions thereof, upon giving the Lessee thirty (30) days' previous notice in writing of election so to terminate this lease in the event that Lessee does not within said thirty (30) days comply therewith; provided that Lessee shall not be entitled to more than ten (10) days' notice or demand before Lessors can terminate lease for failure of Lessee to pay or deliver any money or royalty at the times and as provided herein.

(e) That Lessors may upon the termination of this lease from any cause whatsoever purchase the derrick or casing or both in any well or wells, at the value thereof as they stand on said premises, less costs and expenses of removing the same therefrom, upon giving Lessee twenty (20) days' previous written notice of intention to make such purchase.

(f) That Lessors shall have, own and enjoy free of charge all water developed by operations hereunder and not required by Lessee for use in his operations hereunder.

(g) That for the purpose of this lease a well producing oil, in paying quantities is hereby defined as one which shall produce an average of at least fifty (50) barrels of oil per day for thirty (30) con-

secutive days immediately following completion or producing oil and substances during said period equivalent in value thereto. [23]

(h) Nothing herein contained shall be construed to authorize Lessee to maintain or operate any refinery or cracking plant upon said premises, except for casing-head gasoline at a point mutually agreed upon by Lessee and Lessors, or to maintain storage tanks, or reservoirs, or other structures or appliances thereon for oil or other substances other than that which may be produced upon said premises.

(i) Inability of the Lessee to comply with any provision or condition of this agreement by reason of strikes, unavoidable accident, fire, acts of God, action of the elements, war, insurrection, rebellion, or by reason or interruption of transportation facilities by governmental action, or by any cause whatever beyond the control of the Lessee, if any such suspension of operations upon the part of the Lessee shall result directly from such cause, shall excuse the delay in the work or suspension thereof, but only to the actual extent of such interruption, and it shall be the duty of the Lessee to make every reasonable effort to overcome the difficulties or obstacles causing such delay and to resume work promptly when the cause of the interruption has ceased.

(j) The giving of any notice or the furnishing of any statement herein required to be given from

one party to the other, shall be by written statement, and the delivery of such written statement or notice upon the Lessors shall conclusively be taken as sufficient if left with Lessors or either of them personally at any place, or if sent by registered mail to said Lessors at Santa Fe Springs, California; any such notice or statement shall conclusively be taken as sufficient if left with Lessee personally at any place, or if sent by registered mail to said Lessee at 1016 California Building, Los Angeles, California.

(k) All ways, roads, tracks, reservoirs, tanks, pipe and other lines, and similar works and appliances shall, for the purpose of this lease, be taken and deemed as an appurtenance to each well being drilled or producing oil and/or gas, so long as and to the extent that they are used in the maintenance or construction of such well, or the handling or the storing of the products thereof. [24]

(1) The said well to be drilled on said premises shall be located approximately at the center of said premises at a point agreed upon by Lessors and Lessee, as hereinbefore provided, and Lessors shall not locate or drill, or suffer to be located or drilled, any well on any part of their remaining lands or premises within four hundred (400) feet of the said well located on the premises herein described; only one (1) well shall be drilled on said premises herein described unless Lessors otherwise consent in writing.

(m) Should the parties hereto be unable to agree as to any fact herein required by them to be determined, but not involving a construction of the true intent and meaning of this lease, nor an alteration or violation of its terms, then such question shall be determined by arbitration, as follows: Each party shall select a disinterested arbitrator, and these two shall endeavor to agree. Should they fail to agree, then these two shall within thirty (30) days after their appointment select a third disinterested arbitrator, and the decision of any two of the board of arbitration as thus constituted rendered within thirty (30) days after the appointment of said third arbitrator, shall be final and binding upon the parties.

(n) Because the drilling of various wells in the vicinity of said premises has developed gas in high pressure and gusher oil wells, Lessee shall use and take all reasonable precautions and means and care in drilling well or wells hereunder, and to produce and save all merchantable oil found or developed on said premises according to the best practices and custom in said district.

(o) Time is expressly understood to be of the essence of this contract.

(p) Upon the neglect or failure of Lessee after ten (10) days' previous notice from Lessors to perform any of the covenants, agreements or provisions of this lease on his part to be kept or performed, as to payment or delivery of money or royalty to Lessors, or either of them, then at the option of

Lessors, and as to all other covenants, agreements, and provisions, upon failure by Lessee to comply therewith after thirty (30) days' previous notice from Lessors, this lease and contract, and all rights, privileges [25] easements and interests created in Lessee hereunder shall absolutely cease and terminate, except only as to the right of removal of property therefrom as hereinbefore provided, and thereupon Lessors shall have the right to re-enter and repossess said premises and every part thereof, and remove all persons therefrom, and to hold and enjoy the same as of Lessors' first and former estate. Notice of forfeiture shall be in writing signed by Lessors or their representatives. Waiver of default at any time or in any case shall not constitute any waiver of any subsequent default.

(q) On the expiration of this lease by its terms or the sooner termination thereof by agreement or because of forfeiture, or for any cause whatsoever, Lessee shall quietly and peaceably surrender possession of said premises to Lessors, and shall so far as possible cover all sump holes and excavations made by Lessee, and restore said premises as nearly as possible to the condition in what it was received.

(r) The covenants herein contained shall bind, and inure to the benefit of, the heirs, administrators, successors, executors and assigns of the respective parties and of each of them hereto.

IN WITNESS WHEREOF, the parties hereto

have caused these presents to be duly executed in triplicate the day and year first hereinabove written.

(signed) CHAUNCEY DWIGHT CLARKE

” MARIE RANKIN CLARKE

” J. E. ELLIOTT

(Acknowledgments) [26]

(COPY)

EXHIBIT “B”

KNOW ALL MEN BY THESE PRESENTS:

That for valuable consideration the receipt and sufficiency whereof is hereby acknowledged, the undersigned, J. E. ELLIOTT and LILLIAN F. ELLIOTT, his wife, of Los Angeles, California, do hereby and by these presents, sell, assign, convey, transfer and set over unto ELLIOTT PETROLEUM CORPORATION, a corporation, that certain oil and gas lease dated June 13, 1922, executed by Chauncey Dwight Clarke and Marie Rankin Clarke, as lessors, to said J. E. Elliott as lessee, and registered on June 26, 1922, in Vol. AB, page 11093, as Document 25911, Records of Los Angeles County, California, and covering that certain real property situated in the County of Los Angeles, State of California, and described as follows:

A portion of the fractional Northeast quarter (NE $\frac{1}{4}$) of the Northeast quarter (NE $\frac{1}{4}$) of Section One (1), Township Three (3) South, Range Twelve

(12) West, of the Rancho Santa Gertrudes, subdivided for the Santa Gertrudes Land Association, as per map recorded in Book 1, page 520, of Miscellaneous Records, in the office of the Recorder of said County, described as beginning at the intersection of the southerly line of the Anaheim Telegraph Road with the East line of said Section One (1), thence south $0^{\circ} 10' 15''$ East along said east line of Section One (1) 544.15 feet, thence North $63^{\circ} 38' 35''$ West 491.39 feet, thence north $8^{\circ} 42' 25''$ East 510.91 feet to the southerly line of the said Anaheim Telegraph Road, thence south $63^{\circ} 38' 35''$ east along the said southerly line of the said Anaheim Telegraph Road 403.32 feet to the point of beginning, containing five (5) acres;

TO HAVE AND TO HOLD unto said Elliott Petroleum Corporation, its successors and assigns, forever. [27]

WITNESS our hands this 27th day of June, 1922.

J. E. ELLIOTT

LILLIAN F. ELLIOTT

State of California,
County of Los Angeles—ss.

On this.....day of June, 1922, before me, MAE S. MISKELL, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared J. E. Elliott and Lillian F. Elliott, known to me to be the persons whose names are subscribed to the within instru-

ment, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

MAE S. MISKELL

Notary Public in and for said County and State.

(Original recorded 10/9/22). [28]

EXHIBIT "C".

ASSIGNMENT OF OIL AND GAS
LEASE

ELLIOTT PETROLEUM CORPORATION

A corp.

and

RICHFIELD OIL COMPANY
OF CALIFORNIA
ET AL.

AUGUST 17, 1928.

[29]

(THIS INSTRUMENT affects registered land last Certificate #EC-43395, Los Angeles County, California).

ASSIGNMENT
OF
OIL AND GAS LEASE

THIS INDENTURE made and entered into this 17th day of August 1928, by and between ELLIOTT

PETROLEUM CORPORATION, a corporation, party of the first part, and RICHFIELD OIL COMPANY OF CALIFORNIA, a Delaware corporation, party of the second part,

WITNESSETH:

THAT,

The party of the first part in consideration of \$1.00 and other consideration, does hereby sell, assign, transfer and set over to the party of the second part, that certain oil development lease dated the 13th day of June, 1922, wherein CHAUNCEY DWIGHT CLARKE and MARIE RANKIN CLARKE, are the Lessors, and J. E. ELLIOTT is Lessee, was filed on, the 16th day of June, 1922 as Document #25911, with the Registrar of Land Titles, of the County of Los Angeles, California, and is now endorsed as a memorial on said Registrar's Certificate #EC-43395, and wherein and whereby the following described lands in the County of Los Angeles, State of California, were leased for oil development purposes, to-wit: [30]

A portion of the fractional northeast quarter (NE $\frac{1}{4}$) of the Northeast quarter (NE $\frac{1}{4}$) of Sec. One (1) Township 3 South, Range 12 West, of the Rancho Santa Gertrudes, subdivided for the Santa Gertrudes Land Association, as per map recorded in Book 1, page 502, Miscellaneous Records in the Office of the Recorder of said County, described as:

Beginning at the intersection of the southerly line of the Anaheim Telegraph Road with the east line of said Section 1, thence South $0^{\circ} 10' 15''$ east along the said East line of Sec. 1, 544.15 feet thence north $63^{\circ} 38' 35''$ West 491.39 feet; thence North $8^{\circ} 42' 25''$ east 510.91 feet to the southerly line of the said Anaheim Telegraph Road, thence south $63^{\circ} 38' 35''$ east along the said southerly line of the said Anaheim Telegraph Road 403.32 feet to the point of beginning, containing five (5) acres, situated in the County of Los Angeles, State of California;

in which said lease and the leasehold estate thereby created was assigned to ELLIOTT PETROLEUM CORPORATION by assignment from J. E. ELLIOTT to said ELLIOTT PETROLEUM CORPORATION, dated June 27, 1922, and filed and registered with the said Registrar of Land Titles as Document #29471, and endorsed upon the present outstanding Registrar's Certificate of title No. EC-43395, together with the leasehold estate created by said lease, and all the rights and privileges of the party of the first part thereunder, or by said lease granted to the Lessee therein named.

IN WITNESS WHEREOF, the party of the first part has hereunto caused its corporate name to be hereunto subscribed, and its corporate seal to be hereunto affixed by its President and Secretary [31] by a resolution of its Board of Directors thereunto

duly authorized, on the day and year first above written.

ELLIOTT PETROLEUM

CORPORATION,

By J. E. ELLIOTT,

President.

C. L. SHEETS,

Secretary.

State of California,
County of Los Angeles—ss.

On this 17th day of August 1928, before me RUTH T. DOOLITTLE, a Notary Public in and for the said County and State aforesaid, personally appeared J. E. ELLIOTT, known to me to be the President, and C. L. SHEETS known to me to be the Secretary of said ELLIOTT PETROLEUM CORPORATION, the corporation described in, and that executed the within instrument and they acknowledged to me that such corporation executed the within instrument and that they executed the within instrument for and on behalf of said corporation and as such officers thereof.

WITNESS my hand and official seal the day and year first above written.

RUTH T. DOOLITTLE

Notary Public in and for said County and State. [32]

KNOW ALL MEN BY THESE PRESENTS:

THAT I, MARIE RANKIN CLARKE, one of the Lessors named in the lease described in the fore-

going assignment, and the successor in interest of the other Lessor, CHAUNCEY DWIGHT CLARKE, now deceased, do hereby consent to and approve the foregoing assignment to RICHFIELD OIL COMPANY OF CALIFORNIA, a Delaware Corporation, upon the following express terms and conditions, to-wit:

FIRST: That the assignee shall not hereafter assign, mortgage or incumber the leasehold estate affected by said assignment without my consent in writing, or that of my successor in interest, if any,

SECOND: That the said assignee shall accept this assignment, and the conditions of this consent, in writing.

THIRD: That the giving of any notice or the furnishing of any statement required by said lease to be given by lessor to said assignee as lessee under said lease, shall be conclusively taken as sufficiently served if left with lessee personally at any place or if sent by Registered Mail to said assignee, as such lessee, at Bartlett Building, Los Angeles, California.

DATED: this 17th day of August 1928.

MARIE RANKIN CLARKE

State of California,
County of Los Angeles—ss.

On this 17th day of August 1928, before me,
RUTH T. DOOLITTLE, a Notary Public in and

for the said County and State aforesaid, personally appeared MARIE RANKIN CLARKE to me known to be the person whose name is subscribed to, and who executed the within instrument, and she acknowledged to me that she executed the same.

WITNESS my hand and official seal.

RUTH T. DOOLITTLE

Notary Public in and for said County and State. [33]

KNOW ALL MEN BY THESE PRESENTS:

· THAT, the undersigned, RICHFIELD OIL COMPANY OF CALIFORNIA, a Delaware Corporation, assignee named in the foregoing assignment, does hereby accept and agree to be bound by said assignment, and all the terms and conditions of said lease, and does hereby accept and agree to be bound by the conditions imposed in the foregoing consent to said assignment by MARIE RANKIN CLARKE, the surviving lessor in said lease name.

IN WITNESS WHEREOF, the aforesaid RICHFIELD OIL COMPANY OF CALIFORNIA has caused its corporate name to be hereunto subscribed and its corporate seal to be hereunto affixed by its Vice-President and Secretary by resolution of its

Board of Directors thereunto duly authorized on the day and year next below written.

Dated this 17th day of August, 1928.

RICHFIELD OIL COM-
PANY OF CALIFORNIA

By JOHN McKEON
Vice President.

E. F. TAYLOR
Asst. Secretary.

State of California,
County of Los Angeles—ss.

On this 17th day of August, 1928 before me V. L. WEIDMAN, a Notary Public in and for said County and State, personally appeared JOHN McKEON, known to me to be the Vice President, and E. F. TAYLOR, known to me to be the Asst. Secretary of RICHFIELD OIL COMPANY OF CALIFORNIA the corporation described in and that executed the within instrument, and they acknowledged to me that such corporation executed the within instrument and they executed the within instrument for and on behalf of said corporation, and as such officers thereof.

WITNESS my hand and seal.

F. V. L. WEIDMAN

Notary Public in and for said County and
State. [34]

EXHIBIT "D"

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS:

That ELLIOTT PETROLEUM CORPORATION, a corporation, for and in consideration of the sum of Ten Dollars (\$10.00) lawful money of the United States in hand paid to it by Richfield Oil Company of California, a corporation, does by these presents bargain, sell, convey, assign and set over unto said Richfield Oil Company of California all that certain personal and/or physical equipment situated in the townsite of Santa Fe Springs, and upon property more particularly described as follows:

A portion of the fractional northeast quarter (NE $\frac{1}{4}$) of the Northeast quarter (NE $\frac{1}{4}$) of Sec. One (1), Township 3 South, Range 12 West, of the Rancho Santa Gertrudes, subdivided for the Santa Gertrudes Land Association, as per map recorded in Book 1, page 502, Miscellaneous Records in the Office of the Recorder of said County, described as:

Beginning at the intersection of the southerly line of the Anaheim Telegraph Road with the east line of said Section 1, thence South 0° 10' 15" east along the said East line of Sec. 1, 544.15 feet, thence north 63° 38' 35" West 491.39 feet; thence North 8° 42' 25" east 510.91 feet to the southerly line of the said Anaheim Telegraph Road, thence south 63° 38' 35" east along the said southerly line of the said Anaheim Telegraph Road 403.32 feet to

the point of beginning, containing five (5) acres, situated in the County of Los Angeles, State of California; [35]

and said Elliott Petroleum Corporation warrants and represents that it has complete and unquestioned title to said equipment and properties, and that it has the right to sell and convey the same as of this date. The property hereby conveyed is more particularly set forth in the attached Exhibit; said Exhibit shall be and is hereby declared to be a part of this instrument.

TO HAVE AND TO HOLD unto said Richfield Oil Company of California, its successors, or assigns forever.

ELLIOTT PETROLEUM
CORPORATION

By J. E. ELLIOTT,

(signed) Pres.

By C. L. SHEETS,

(signed) Sec.

[36]

EXHIBIT

1	24x24x114 Wood Derrick	
1	Ross & Seeley Bull Wheel	13"x14"
1	" " " Calf Wheel	13"x7'6"
1	Pacific Oil Tool Hydraulic Pump	
1	Foamite Fire Extinguisher	2½ gal.
1	Foamite Fire Extinguisher	2½ gal.
1	Set O.W.S. Rig Irons	6 "
1	O.C.S. Counter Balance	

1	8 Ply Engine Belt	14"x95"
38'	Sprocket Chain	Size 1030
1	Emsco Crown Block	
	5 Mang Sheaves	26"
	2 C. I. Sheaves	30"
	5 I-Beams	5x12
	4½" Gudgeons	
1	Marion Single Friction Sand Reel	5"x9'
1	Duro Gas Trap	
1	50 H.P. Western Machinery Gas Engine Type G-17 R.P.M. 235 Bore 12¼" Stroke 20"	
1	McCord Pressure Feed Lubricator	4 Quart
1	Western Machinery Centrifugal Pump	1¼"x1¼"
1	Liberty Air Compressor Type A.C. Made by Air Compressor & Equipment Co.	
1	Corrugated Tank, W.P.S.	25 BBL.
1	Corrugated Tank, W.P.S. Cone Top	75 "
3	Titusville H.R.T. Boilers	70 H.P.
1	Gardner D.P.P. Pump	6x4x6
1	Gardner D.P.P. Pump	6x4x6
1	Corrugated Iron Boiler House	32'x48'
2	Holbrook Corrugated Iron Tanks	2500 Bbl.
1	Holbrook B.S. Tank	500 "
2	Holbrook Corrugated Iron Tanks	500 "
1	Holbrook B.S. Tank	25 "
1	40 Gal. Foam Cart. Recharged with hose	
150'	2½" Hose (Fire Hose) Mounted on hose cart	
1	Corrugated Iron Fire House Wood Floor	8'x12'
1	Corrugated Iron Tool House Cement Floor	8'x10'
1	Corrugated Iron Warehouse (Used 75% Whse., 25% Garage)	33'x75'
1	Corrugated Iron Lab. House Cement Floor	12'x24'
1	4 Tube Braun Centrifuge ½ H.P. 110 Volts by 220 3 phase 60 Cycle Speed 1750 Serial #342822	
1	Cad. Roadster Type Truck License #286156 Eng. #A21208 First Sold 1916	
	Water well and equipment, dehydrator, fittings, etc.	[37]

EXHIBIT "E"

COLLATERAL AGREEMENT

ELLIOTT PETROLEUM CORPORATION,

a corporation

and

RICHFIELD OIL COMPANY OF CALIFORNIA

a corporation

August 17, 1928

[38]

COLLATERAL AGREEMENT

THIS AGREEMENT, made and entered into this 17th day of August, A.D. 1928, by and between ELLIOTT PETROLEUM CORPORATION, a CALIFORNIA Corporation, party of the first part, and RICHFIELD OIL COMPANY OF CALIFORNIA, a Delaware Corporation, party of the second part,

WITNESSETH:

THAT,

WHEREAS, the first party does hereby and by an instrument of even date herewith, assign to second party, that certain oil development lease, together with the leasehold estate hereby created and the rights and privileges therein granted, which said lease is dated June 13, 1922, and wherein CHAUNCEY DWIGHT CLARKE AND MARIE RANKIN CLARKE are Lessors, and one J. E. ELLIOTT is Lessee, and which said lease was filed on the 26th

day of June 1922, as Document No. 25,911, with the Registrar of Land Titles of the County of Los Angeles, State of California, and is now endorsed as a memorial on the present outstanding Registrar's Certificate No. EC-43,395, and

WHEREAS, said lease and leasehold estate and rights and privileges have by assignment been and now are, vested in the party of the first part, and

WHEREAS, as a part of this transaction and in connection therewith and for the same consideration, the party of the first part [39] does hereby and by a separate instrument of even date herewith, sell assign and transfer to the party of the second part, certain drilling equipment and personal property, reference to which assignment or bill of sale is hereby made for further particulars.

NOW THEREFORE, IT IS AGREED, by and between the parties hereto, with respect to said assignment and said bill of sale, as follows:

FIRST: That the consideration for said bill of sale and assignment of lease is the sum of Two Hundred seventy-five thousand (\$275,000.00) dollars, of which the sum of one hundred thirty-seven thousand, five hundred (\$137,500.00) dollars is paid in cash, the receipt of which is hereby acknowledged.

SECOND: That said assignment is accepted by the second party, subject to the following oil and gas sale contracts, to-wit:

(a) A contract for the sale and treatment of gas produced from the said demised premises by the

first party herein and by it with the Pacific Gasoline Company, and dated February 13, 1924, which said contracts the second party assumes and agrees to perform, but with the privilege of exercising any right of cancellation thereof, which the first party might now or hereafter be entitled to exercise.

THIRD: The second party agrees that it will, immediately upon the execution of this instrument, commence operations for the drilling of a new and additional oil well upon the demised premises and continue such operations and drilling diligently and continuously until the same are completed in the said deeper sand or oil measure recently discovered to exist below what is commonly known as the "Meyer Sand" in the Santa Fe Springs field; said deeper sand or oil measure will be herein referred to as the "deeper sand". [40]

FOURTH: The second party undertakes and agrees that it will until it has fully paid the balance of the purchase price herein referred to, comply with all the obligations and conditions of the original lease, as the same now exists and if the same shall be modified by an instrument executed concurrently herewith, and will protect such lease against violation or forfeiture, and that it will continuously and diligently produce oil and/or gas from said lease, and from all wells now or hereafter drilled thereon, so long as such lease produces any of the substances referred to or described in said original lease in quantities sufficient to pay to produce and save.

FIFTH: The term "deeper sand", when used in this agreement, shall be taken and deemed to be any oil or gas producing sand or strata below five thousand (5,000) feet or any such producing sand below and separated by an impervious strata from the present producing sand known as the Meyer sand, from which production is being had on the demised premises, but for the purposes of this agreement as to development in the first well herein provided for, such deeper sand must necessarily include penetration for testing purposes at its stratigraphic level under the demised premises of the sand from which what is commonly known as the Buckbee Well, drilled by Wilshire Oil Company, is now producing.

SIXTH: It is agreed that second party shall pay the balance of the purchase price above referred to, amounting to \$137,500.00, out of one half of the net proceeds of all production from the demised premises. The term "net" as here used, shall apply to and be deemed to be the proceeds of all of the gross production of oil gas or other substances of value produced and saved after deducting therefrom the royalties provided for in the above lease or the modification thereof, hereinbefore referred to, and the amount thereof as fuel as provided in said lease and/or said modification.

Payments on account of the balance of the purchase price, statements affecting the same and rights of inspection shall be as are provided for in the lease above referred to and be governed by the rules and obligations therein specified as such lease now exists,

and/or as the same shall exist under said modification, respecting the payment of royalty under said lease, as to time, diligence and procedure.

The price, however, governing the payments to first party for the balance of the purchase price of oil and/or [41] gas, shall be the price as to oil which the Lessee therein named, shall pay to the Lessor therein named, (in the event that the Lessor shall elect to take royalties in cash or enter into a joint contract for the sale of oil) or the posted price of the Standard Oil Company for said Santa Fe Springs field for oil of like grade and quality, whichever shall be greater.

SEVENTH: Should the second party voluntarily surrender said lease, while and so long as said lease produces oil or gas or other of said substances in quantities sufficient to produce or save, or should the leasehold estate be lost by reason of the default of the party of the second part, or should the party of the second part remain in default for the period of fifteen days in the performance of any other of the terms or conditions of this agreement, direct or adopted, after written demand for such performance, then the balance of the purchase price shall become immediately due and payable and the same shall constitute a personal and direct obligation of the party of the second part to the party of the first part, anything in this instrument to the contrary notwithstanding.

EIGHTH: The Assignor hereby warrants to the Assignee that its title to the leasehold estate hereby

assigned, is free and clear of all liens, encumbrances and claims done, made or suffered by it, or its immediate Assignor, J. E. ELLIOTT, except those herein expressly referred to and assumed by the Assignee.

NINTH: The terms "drilling", "operations", and "Producing" when used in this agreement shall be deemed to be with a sufficiency of labor and material, first-class tools and equipment and in accordance with custom and good practice in the industry.

IN WITNESS WHEREOF, the respective parties hereto have caused these presents to be executed, in duplicate, and their respective corporate names to be hereunto subscribed and their respective corporate seals to be hereunto affixed, by their respective officers [42] thereunto duly authorized by resolution of their respective Boards of Directors, all on the day and year in this instrument first above written.

ELLIOTT PETROLEUM
CORPORATION

(Signed) By J. E. ELLIOTT
President

(Signed) C. L. SHEETS
Secretary

RICHFIELD OIL COM-
PANY OF CALIFORNIA

(Signed) By JOHN McKEON
Vice President

(Signed) E. F. TAYLOR
Asst. Secretary

[Endorsed]: Filed June 11, 1934. [43]

[Title of Court and Cause.]

Melvin D. Wilson, Esq. for the petitioner.

I. Graff, Esq, and E. G. Sievers, Esq., for the respondent.

MEMORANDUM OPINION.

ADAMS: This proceeding involves a proposed deficiency for the year 1930 in the amount of \$1,045.29. The sole question presented is whether the amount of \$69,699.81, received by petitioner out of oil in part payment for the assignment of certain oil and gas leases to the Richfield Oil Company, is subject to depletion. The case was submitted upon stipulation and exhibits attached thereto.

Petitioner is a corporation having its principal office and place of business at Los Angeles, California. It filed a corporation income tax return for the calendar year 1930 with the Collector of Internal Revenue for the Sixth District of Los Angeles, California.

On or about June 13, 1922, J. E. Elliott leased certain oil bearing land in the County of Los Angeles from Chauncey Dwight Clarke and Marie Rankin Clarke. A copy of said lease is included herein by reference. [44]

On the 27th day of June, 1922, J. E. Elliott and Lillian F. Elliott, his wife, assigned all their right, title and interest in and to the said Clarke lease to the petitioner. A copy of said assignment is included herein by reference.

On August 17, 1928, the petitioner entered into an agreement with the Richfield Oil Company of California, transferring said lease to the Richfield Oil Company. This agreement, called "Assignment of Oil and Gas Lease," is included herein by reference.

On August 17, 1928, the petitioner entered into an agreement with the Richfield Oil Company of California designated "Bill of Sale," which agreement is included herein by reference. Under this agreement the petitioner sold to the Richfield Oil Company certain personal and/or physical equipment designated therein and situated upon the leasehold property assigned by petitioner to the Richfield Oil Company on the same date as set out above.

On August 17, 1928, the petitioner entered into an agreement with the Richfield Oil Company of California designated "Collateral Agreement," which is included herein by reference. This agreement provides in part as follows:

WHEREAS, the first party does hereby and by an instrument of even date herewith, assign to second party, that certain oil development lease, together with the leasehold estate hereby created and the rights and privileges therein granted, which said lease is dated June 13, 1922, and wherein Chauncey Dwight Clarke and Marie Rankin Clarke are Lessors, and one J. E. Elliott is Lessee, * * *

* * * * *

WHEREAS, as a part of this transaction in connection therewith and for the same consid-

eration, the party of the first part does hereby and by a separate instrument of even date herewith, sell, assign and transfer to the party of the second part, certain drilling equipment and personal property, reference to which assignment or bill of sale is hereby made for further particulars. [45]

The consideration was \$275,000, of which the sum of \$137,500 was to be paid in cash and the balance of the purchase price amounting to \$137,500 was to be paid "out of one-half of the net proceeds of all production from the demised premises." It was further provided as follows:

Should the second party voluntarily surrender said lease, while and so long as said lease produces oil or gas or other of said substances in quantities sufficient to produce or save, or should the leasehold estate be lost by reason of the default of the party of the second part, or should the party of the second part remain in default for the period of fifteen days in the performance of any other of the terms or conditions of this agreement, direct or adopted, after written demand for such performance, then the balance of the purchase price shall become immediately due and payable and the same shall constitute a personal and direct obligation of the party of the second part to the party of the first part, anything in this instrument to the contrary notwithstanding.

Petitioner received in 1928 from the Richfield Oil Company of California, on account of said agreement, the cash consideration of \$137,500 mentioned in said agreement plus \$19,494.58 on account of the balance of consideration mentioned in said agreement, or an aggregate amount of \$156,994.58. In 1929 petitioner received \$35,797.68 on account of the balance of the consideration mentioned in said agreement. At the time of petitioner's said agreements with the Richfield Oil Company of California, petitioner's unrecovered capital cost of the said Clarke lease was \$38,272.53. In the final determination of petitioner's tax liability for 1928 the Commissioner deducted said unrecovered capital cost from the said amount of \$156,994.58 in arriving at the taxable net profit from the transaction. [46]

The agreement between the petitioner and the Richfield Oil Company of California was carried out in all respects from its date through December 31, 1930. Petitioner received from the Richfield Oil Company of California in 1930, on account of said agreement, the sum of \$69,699.81.

If petitioner is entitled to a deduction from said gross income of \$69,699.81 for depletion, the amount of such deduction shall be \$19,167.44 which is 27½ per cent of the said \$69,699.81.

This case does not differ in principle from *Chester Addison Jones*, 31 B.T.A. 55, wherein we held that where a taxpayer transferred all his interest in certain oil rights for cash and part of the proceeds from

the sale of the oil if, as and when produced he retained an economic interest in the oil and was entitled to a deduction for depletion on the deferred payments which he received from the proceeds of the oil.

As we read the collateral agreement in this case the petitioner is entitled to receive the deferred amount of \$137,500 only from the production of oil unless there is a default on the part of the second party. In case of such default and in such case only does the balance of the purchase price become a direct and personal obligation of the second party. Since there has been no default, under the agreement, by the second party we may not speculate as to such contingency but must consider the case under the facts as they existed in the taxable year.

There is no question but that the amount in dispute was received by petitioner under the terms of his agreement with the Richfield Oil Company and represented payments from the proceeds the oil produced in the taxable [47] year. We think petitioner is entitled to a deduction for depletion of 27½ per cent of the \$69,699.81 under the Revenue Act of 1928. Chester Addison Jones, *supra*; William Fleming, 31 B.T.A., Report No. 127, promulgated November 16, 1934; cf. *Palmer v. Bender*, 287 U.S. 551.

Decision will be entered for the petitioner.

Enter:

[Endorsed]: Entered Jan. 2, 1935. [48]

United States Board of Tax Appeals
Washington

Docket No. 71769.

ELLIOTT PETROLEUM CORPORATION,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION.

Pursuant to the determination of the Board, as set forth in its memorandum opinion entered January 2, 1935, it is

ORDERED and DECIDED: That there is no deficiency for the year 1930.

[Seal] (Signed) ANNABEL MATTHEWS

Member.

Enter:

[Endorsed]: Entered Jan. 3, 1935. [49]

In the United States Circuit Court of Appeals for
the Ninth Circuit.

Docket No. 71769.

GUY T. HELVERING, Commissioner of Internal
Revenue,

Petitioner,

v.

ELLIOTT PETROLEUM CORPORATION,

Respondent.

PETITION FOR REVIEW AND ASSIGN-
MENTS OF ERROR.

To the Honorable Judges of the United States Cir-
cuit Court of Appeals for the Ninth Circuit:

NOW COMES Guy T. Helvering, Commissioner
of Internal Revenue, by his attorneys, Frank J.
Wideman, Assistant Attorney General, Robert H.
Jackson, Assistant General Counsel for the Bureau
of Internal Revenue, and I. Graff, Special Attorney,
Bureau of Internal Revenue, and respectfully shows:

I.

That he is the duly appointed, qualified and acting
Commissioner of Internal Revenue, holding his office
by virtue of the laws of the United States; that
Elliott Petroleum Corporation, the respondent on
review, hereinafter called the respondent, is a cor-
poration having its principal office and place of
business at Los Angeles, California; that the income
tax return of said corporation for the calendar year

1930, the year here involved, was filed with the Collector of Internal Revenue for the Sixth District of California, and that the office of said Collector is located within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Circuit. [50]

II.

The Commissioner determined a deficiency in income tax against the respondent for the year 1930 in the amount of \$1,045.29 and on March 8, 1933 sent to it by registered mail notice of said deficiency in accordance with the provisions of Section 272 of the Revenue Act of 1928. Thereafter on May 1, 1933 the respondent filed an appeal from said notice of deficiency with the United States Board of Tax Appeals.

On June 11, 1934 the case was submitted to the Board of Tax Appeals for its decision at an oral hearing on a stipulation of facts. On January 2, 1935 the Board promulgated a memorandum opinion and on January 3, 1935 the Board entered its decision and order of redetermination in accordance with its opinion wherein and whereby it ordered and decided that there is no deficiency in income tax owing by the respondent for the year 1930.

III.

The nature of the controversy is as follows, to-wit:

The sole question involved is whether the respondent is entitled to a depletion deduction of 27½% of the amount of \$69,699.81 received by it in 1930 out of the net proceeds of certain oil production.

On or about June 13, 1922 one J. E. Elliott leased certain oil bearing land in the County of Los Angeles from Chauncey Dwight Clarke and Marie Rankin Clarke. On June 17, 1922 said Elliott and his wife, Lillian F. Elliott, assigned all their right, title and interest in and to the said Clarke lease to the respondent. On August 17, 1928 the respondent sold, assigned, transferred and set over to the Richfield Oil Company of [51] California said lease and the appurtenant drilling equipment and personal property for the sum of \$275,000.00, of which the sum of \$137,500.00 was paid in cash at the time of the agreement. The balance of the consideration, amounting to \$137,500.00, was to be paid "out of one-half of the net proceeds of all production from the demised premises". The respondent received the following sums on account of the balance of the purchase price:

1928	\$19,494.58
1929	\$35,797.68
1930	\$69,699.81

Before the Board of Tax Appeals, the respondent claimed the right to a deduction for depletion of \$19,167.44, which amount represents 27½% of \$69,699.81, the payment received in 1930 on account of the balance of the purchase price. The petitioner, the Commissioner of Internal Revenue, contended that the payments received out of the proceeds of production were not subject to an allowance for depletion.

The Board of Tax Appeals sustained the contention of the respondent holding that the payments received out of the proceeds of production were subject to depletion.

IV.

The petitioner's assignments of error are as follows, to-wit:

1. The Board of Tax Appeals erred in holding that the amount of \$69,699.81, received by the respondent in 1930 out of the proceeds of oil production in part payment for the assignment of a certain oil and gas lease and the appurtenant equipment and personal property, is subject to depletion. [52]

2. The Board erred in holding that respondent was entitled to a deduction for depletion of \$19,167.44, representing 27½% of \$69,699.81.

3. The Board erred in redetermining the respondent's tax liability and deciding that there was no deficiency for the year 1930.

4. The Board erred in failing to hold that respondent was not entitled to a deduction for depletion on said amount of \$69,699.81.

5. The Board erred in failing to approve the deficiency in tax for the year 1930 as determined by the petitioner.

6. The Board erred in not rendering judgment for the petitioner for the reason that any other judgment was not supported by any competent and substantial evidence nor according to law.

WHEREFORE, the Commissioner petitions that the decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit; that a transcript of the record be prepared in accordance with law and with the rules of said Court, and transmitted to the Clerk of said Court for filing and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

(Signed) FRANK J. WIDEMAN
Assistant Attorney General.

(Signed) ROBERT H. JACKSON
Assistant General Counsel for the Bureau of
Internal Revenue.

OF COUNSEL:

I. GRAFF,
Special Attorney,

Bureau of Internal Revenue. [53]

United States of America,
District of Columbia—ss.

I. GRAFF, being duly sworn, says that he is a special attorney in the Office of the Assistant General Counsel for the Bureau of Internal Revenue, and as such is duly authorized to verify the foregoing petition for review; that he has read said petition and is familiar with the contents thereof; that said petition is true of his own knowledge except as to mat-

ters therein alleged on information and belief, and as to those matters he believes it to be true.

(Sgd.) I. GRAFF

Sworn and subscribed to before me this 18 day of March, 1935.

(Sgd.) GEORGE W. KREIS

Notary Public.

My commission expires Nov. 16, 1937.

[Endorsed]: Filed Mar. 19, 1935. [54]

[Title of Court and Cause.]

NOTICE OF FILING PETITION FOR
REVIEW.

To: Elliott Petroleum Corporation, 417 South Hill Street, Los Angeles, California. Melvin D. Wilson, Esq., Title Insurance Building, Los Angeles, California.

You are hereby notified that the Commissioner of Internal Revenue did on the 19th day of March, 1935, file with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of the Board heretofore rendered in the above-entitled case. A copy

of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 19th day of March, 1935.

(Signed) ROBERT H. JACKSON
Assistant General Counsel for the Bureau of
Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 25 day of March, 1935.

ELLIOTT PETROLEUM COR-
PORATION

(Sgd.) By J. E. ELLIOTT Pres
Respondent on Review.

(Sgd.) MELVIN D. WILSON
Attorney for Respondent on Review.

[Endorsed]: Filed Mar. 30, 1935. [55]

[Title of Court and Cause.]

PRAECIPE FOR RECORD.

To the Clerk of the United States Board of Tax
Appeals:

You will please prepare, transmit and deliver to
the Clerk of the United States Circuit Court of Ap-

peals for the Ninth Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Ninth Circuit, heretofore filed by the Commissioner of Internal Revenue.

1. Docket entries of the proceedings before the Board.

2. Pleadings before the board,

(a) Petition, including annexed copy of deficiency letter.

(b) Answer.

3. Agreed statement of facts, including exhibits A to E, inclusive, made a part of the agreed statement.

4. Memorandum opinion of the Board.

5. Decision of the Board.

6. Petition for review, together with proof of service of notice of filing petition for review and of service of a copy of the petition for review. [56]

7. This praecipe, together with proof of service of notice of filing praecipe and of service of a copy of praecipe.

(Signed) ROBERT H. JACKSON

Assistant General Counsel for the Bureau of
Internal Revenue.

[Endorsed]: Filed Apr. 11, 1935. [57]

[Title of Court and Cause.]

NOTICE OF FILING PRAECIPE FOR
RECORD.

To: Elliott Petroleum Corporation, 4731 East 52nd Drive, Los Angeles, California. Melvin D. Wilson, Esq., Title Insurance Building, Los Angeles, California.

You are hereby notified that the Commissioner of Internal Revenue did, on the 11th day of April, 1935, file with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a Praecipe for Record. A copy of this praecipe as filed is hereto attached and served upon you.

Dated this 11th day of April, 1935.

ROBERT H. JACKSON

Assistant General Counsel for the Bureau of
Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of praecipe for record, is hereby acknowledged this 16th day of April, 1935.

ELLIOTT PETROLEUM
CORPORATION

By F. C. MERRITT,

Vice President.

Respondent on Review.

MELVIN D. WILSON,

Attorney for Respondent on Review.

[Endorsed]: Filed May 13, 1935. [58]

[Title of Court and Cause.]

CERTIFICATE.

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 58, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Prae-*cip*e in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 7th day of June, 1935.

[Seal]

B. D. GAMBLE

Clerk, United States Board of Tax Appeals.

[Endorsed]: No. 7892. United States Circuit Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. Elliott Petroleum Corporation, Respondent. Transcript of the Record. Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed June 11, 1935.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

